Pembinaan Masdamai Sdn Bhd v Me-Wong Builders Sdn Bhd

HIGH COURT (MIRI) — ORIGINATING SUMMONS NO MR31 OF 1993
RICHARD MALANJUM J
8 FEBRUARY 1994

Land Law — *Restraints on dealings — Caveats — Removal — Locus standi — Whether donee of a power of attorney has locus standi to apply for removal of caveat — Sarawak Land Code (Cap 81) s 177(1)*

Land Law — *Sub-division — Continuation of title — Whether sub-divided titles were a continuation of original title — Sarawak Land Code (Cap 81) s 45(3)*

Words and Phrases — *'The said landed property'*

The plaintiff was the donee of a power of attorney given to it by the registered owner of land held under a lease ('the parent title'). The power of attorney was registered on the parent title which was subsequently submitted for sub-division. Sub-divided issue documents of title were issued, each containing an endorsement of the power of attorney in the form of an extract or copy from the parent title. The plaintiff applied, inter alia, to remove a caveat lodged by the defendant over the land. The main issue before the court was the effect of the endorsement of the power of attorney on the sub-divided issue documents of title.

The plaintiff argued that the power of attorney should be considered as duly registered in relation to the sub-divided issue documents of title as it has been endorsed thereto. On the other hand, the defendant contended that the plaintiff had no locus standi to commence the action as it was not within the category of persons specified under s 177(1) of the Sarawak Land Code (Cap 81) ('the Code') and that: (i) the purported endorsement of the power of attorney on the sub-divided issue documents of title was of no consequence because s 189 of the Code had not been complied with; (ii) the parent title had been surrendered and only registered charges and other interests in the parent title run with the land and as the power of attorney did not create any interest in the land, upon the surrender of the parent title, the power of attorney was extinguished and did not continue in the sub-divided issue documents of title; and (iii) a power of attorney is in effect only an authority given. Counsel for the plaintiff conceded that a power of attorney would not itself amount to an interest under s 45(3) of the Code, but submitted that the word 'interests' in s 45(3) could be interpreted to include a power of attorney and argued that there was no provision for re-registration of a power of attorney under s 189 of the Code.

Held, dismissing the plaintiff's application:

(1) A power of attorney would not give an interest in land. To say that the word 'interests' in s 45(3) is wide enough to cover a power of attorney would not be consonant with the usual status accorded to a power of attorney. Therefore, the purported endorsement of the power of attorney on the sub-divided issue documents of title was of no consequence as it is not provided for by the Code or under any written law currently in force in Sarawak. Accordingly, the plaintiff had not met the requirement of s 177(1) of the Code and had no locus standi to commence this proceeding.

(2) It is to be noted that there is no provision in the Code or in the Land (Control of Sub-division) Ordinance (Cap 81) providing for the continuation of a title deed on land in the event of its sub-division, surrender and subsequent issuance of sub-divided title deeds similar to that of s 202 of the National Land Code 1965. Thus, the sub-divided issue documents of title were not and should not be taken as a continuation of the parent title.

(3) The phrase 'the said landed property' which referred to land comprised under one title, did not include the sub-divided lots resulting from a sub-division of that land, and which were held under separate sub-divided issue documents of title.

[Bahasa Malaysia summary

Plaintif merupakan penerima suatu surat kuasa wakil yang diberikan kepadanya oleh tuan punya berdaftar sebidang tanah yang dipegang di bawah suatu pajakan ('hakmilik induk itu'). Surat kuasa wakil itu telah didaftarkan di atas hakmilik induk itu yang kemudiannya telah diserahkan untuk dipecah lot. Dokumen hakmilik keluaran bagi tanah yang dipecah lot itu telah dikeluarkan, setiap satunya mengandungi suatu pengindorsan mengenai surat kuasa wakil itu dalam bentuk ekstrak atau salinan daripada hakmilik induk. Plaintif telah memohon, antara lain, untuk menyingkir kaveat yang dimasukkan oleh defendan ke atas tanah itu. Isu utama di hadapan mahkamah adalah kesan pengindorsan surat kuasa wakil itu ke atas dokumen hakmilik keluaran bagi tanah yang telah dipecah lot itu.

Plaintif berhujah bahawa surat kuasa wakil itu seharusnya dianggap sebagai telah didaftarkan bagi tujuan dokumen hakmilik keluaran tanah yang dipecah lot itu kerana ianya telah diindorskan ke atasnya. Akan tetapi, defendan telah menegaskan bahawa plaintif tidak mempunyai locus standi untuk memulakan tindakan itu kerana ia tidak termasuk dalam kategori orang yang ditetapkan di bawah s 177(1) Kanun Tanah Sarawak (Bab 81) ('Kanun itu') dan bahawa: (i) pengindorsan surat kuasa wakil yang dikatakan itu telah dibuat ke atas dokumen hakmilik keluaran tanah yang dipecah lot itu tidak berkesan kerana s 189 Kanun itu tidak dipatuhi; (ii) hakmilik induk

itu telah diserahkan dan hanya gadaian berdaftar dan kepentingan lain di dalam hakmilik induk itu yang terus wujud bersama tanah itu, dan oleh kerana surat kuasa wakil itu tidak mewujudkan sebarang kepentingan di dalam tanah, apabila hakmilik induk itu telah diserahkan, surat kuasa wakil itu telah ditamatkan dan tidak berterusan dengan dokumen hakmilik keluaran bagi tanah yang dipecah lot itu; dan (iii) suatu surat kuasa wakil adalah semata-matanya suatu kuasa yang diberikan. Peguambela plaintif mengaku bahawa suatu surat kuasa wakil dengan sendirinya tidak bererti terdapat suatu kepentingan di bawah s 45(3) Kanun itu, tetapi berhujah bahawa perkataan 'interests' di dalam s 45(3) boleh ditafsirkan supaya suatu surat kuasa wakil termasuk di dalam maksudnya dan berhujah bahawa tidak ada peruntukan bagi pendaftaran semula suatu surat kuasa wakil di bawah s 189 Kanun itu.

Diputuskan, menolak permohonan plaintif:

(1) Suatu surat kuasa wakil tidak akan memberi suatu kepentingan di dalam tanah. Untuk berkata bahawa perkataan 'interests' di dalam s 45(3) cukup luas untuk merangkumi suatu surat kuasa wakil tidak sejajar dengan taraf yang biasa diberikan kepada suatu surat kuasa wakil. Oleh itu, pengindorsan surat kuasa wakil yang dikatakan telah dibuat ke atas dokumen hakmilik keluaran bagi tanah yang telah dipecah lot itu tidak berkesan kerana ianya tidak diperuntukkan oleh Kanun itu atau di bawah sebarang undang-undang bertulis yang kini berkuatkuasa di Sarawak. Dengan demikian, plaintif tidak memenuhi keperluan s 177(1) Kanun itu dan tidak mempunyai locus standi untuk memulakan prosiding ini.

(2) Patutlah diperhatikan bahawa tidak ada peruntukan di dalam Kanun itu atau di dalam Land (Control of Sub-division) Ordinance (Cap 81) yang membuat peruntukan bagi penerusan suatu hakmilik tanah apabila ianya dipecah lot, diserah dan kemudiannya suratikatan hakmilik bagi tanah yang dipecah lot dikeluarkan seperti yang terdapat di dalam s 202 Kanun Tanah Negara 1965. Oleh itu, dokumen hakmilik bagi tanah yang dipecah lot itu tidak dan tidak seharusnya dianggap sebagai suatu penerusan hakmilik induk.

(3) Frasa 'hartanah itu' yang merujuk kepada tanah yang dipegang di bawah satu hakmilik, tidak termasuk lot yang telah disubbahagi akibat daripada suatu pecah lot tanah tersebut, dan yang dipegang di bawah dokumen hakmilik keluaran berasingan bagi tanah yang dipecah lot itu.]

[*Editorial Note*: The plaintiff has applied for leave to appeal to the Supreme Court.]

Cases referred to

1 *Penang Development Corp v Teoh Eng Huat & Anor* [1992] 1 MLJ 749; [1993] 2 MLJ 97 (refd)

A 2 *Mohammed bin Buyong v Pemungut Hasil Tanah Gombak & Ors* [1982] 2 MLJ 53 (refd)
3 *Wandsworth London Borough Council v Winder* [1985] AC 461; [1984] 3 All ER 976; [1984] 3 WLR 1254 (refd)
4 *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 (refd)
B 5 *Lee Chi Min & Anor v Superintendent of Land & Survey Department, Kuching* [1981] 1 MLJ 93 (refd)
6 *Commissioner of Land Titles, Penang v Lim Theng Hoe* [1988] 1 MLJ 24 (refd)

C **Legislation referred to**
Sarawak Land Code (Cap 81) ss 25, 45, 177, 189

Albert Tang (*Chew, Jugah, Wan Ullok, Goh & Co*) for the plaintiff.
Linton Albert (*Linton & Co*) for the defendant.

D *Cur Adv Vult*

Richard Malanjum J: By an originating summons dated 28 April 1993 supported by an affidavit of one Jimmy Lai Tuck Wah affirmed on 16 April 1993, the plaintiff is applying for:

E (i) the removal of a caveat registered at the Bintulu Land Registry Office as Instrument No L2654/1992 affecting several parcels of land;
(ii) an order for compensation for damages suffered; and
(iii) costs.

F At the outset of the hearing, learned counsel for the parties submitted the agreed issues for the determination by this court. They are as per the document marked 'A', namely:

(a) whether the power of attorney dated 17 October 1983, Instrument No L5024/1983, gives the plaintiff the right to apply to the High Court
G for an order that the caveat lodged by the defendant on 30 October 1992, Instrument No L2654/1992, be removed vis-a-vis s 177(1) of the Sarawak Land Code (Cap 81) (hereinafter referred to as 'the Code');
(b) whether the defendant has a caveatable interest in the lands caveated vide the caveat dated 30 October 1992, Instrument No L2654/1992, vis-a-vis s 173(a) of the Code; and
H (c) whether the defendant ought to pay damages to the plaintiff vis-a-vis s 179 of the Code and if so, the issue of assessment of damages, interests and costs.

Learned counsel for the parties further agreed that issue (a) above should
I be considered first before the other issues are argued.

There are several affidavits filed by both parties in this action but for the purpose of issue (a), only the affidavit of Lai Chee Hua affirmed on 6 October 1993 (hereafter called 'Lai Chee Hua's affidavit') has been specifically referred to. Arising from Lai Chee Hua's affidavit and the submissions of

learned counsel, there are several undisputed facts being disclosed which, in my view, are relevant in determining issue (a). They are as follows: A

(i) Lease of Crown Land No 6237 (hereinafter called 'the said land') is the parent title of the sub-divided issue documents of title affected by the caveat in question;
(ii) the registered proprietor of the parent title and subsequently the sub-divided issue documents of title after the surrender and sub-division is Matnor bin Arshad @ Matnor bin Alsat; B
(iii) the plaintiff secured an irrevocable power of attorney dated 17 October 1983 (hereafter called 'the said power of attorney') from the registered proprietor in respect of the parent title and which was duly registered on 18 October 1983 vide Instrument No L5024/1983; C
(iv) sub-division of the parent title was applied and completed upon the registration of the sub-divided issue documents of title with their respective lot numbers given on 6 November 1991; and
(v) the sub-divided issue documents of title contained, inter alia, an endorsement of the existence of the said power of attorney referred to in (iii) above. The endorsement is in the form of being copied only or rather an extract from the parent title. D

It is the plaintiff's case that it has commenced this action on the ground that it is the donee of the said power of attorney. And the plaintiff argued that the said power of attorney should be considered as duly registered in relation to the sub-divided issue documents of title as it has been endorsed thereto. E

The defendant on the other hand is contending that the plaintiff has no locus standi to commence this action as it is not within the category of persons specified under s 177(1) of the Code. Learned counsel for the defendant also contended that the purported endorsement of the said power of attorney on the sub-divided issue documents of title was of no consequence because: F

(i) section 189 of the Code had not been complied with;
(ii) the parent title had been surrendered and only registered charges and other interests in the parent title run with the said land. Otherwise, the effect of the surrender is a reversion of the said land to the Government. Section 45 and in particular s 45(3) of the Code was referred to. Learned counsel submitted that the said power of attorney did not create any interest in the said land and therefore upon the surrender of the parent title, the effect of the registration of the said power of attorney was extinguished and did not continue in the sub-divided issue documents of title; and G H
(iii) a power of attorney is in effect only an authority given.

In reply, learned counsel for the plaintiff conceded that a power of attorney would not amount to an interest itself under s 45(3) of the Code. But he submitted that the word 'interests' in s 45(3) could be interpreted to include a power of attorney. He further argued that there was no provision I

for re-registration of a power of attorney under s 189 of the Code. Learned counsel also questioned the propriety of attacking the act of the Registrar of Land Titles without going by direct attack when there was no error on the face of the document. He cited the case of *Penang Development Corp v Teoh Eng Huat & Anor*[1] and subsequently the same case before the Supreme Court.

Having considered the submissions of learned counsel, I think the question to be asked is: 'What is the effect of the purported endorsement of the said power of attorney on the sub-divided issue documents of title?'

From the copies of the sub-divided issue documents of title annexed to Lai Chee Hua's affidavit, it is obvious that the purported endorsement appears to be only copied or an extract from the parent title. As to whether or not it was the result of the act of the Registrar of Land Titles or by any of his clerks or that he had the power to do so under the Code, the plaintiff appeared to be silent. (See *Mohammed bin Buyong v Pemungut Hasil Tanah Gombak & Ors.*[2]) Thus, the reliance on the *Penang Development Corp* case[2] in my view was premature. Further, I found no reason why it could not be questioned by way of defence if it was obvious that the law provided no such power. (See *Wandsworth London Borough Council v Winder.*[3]) On this ground alone, I think it can be ruled that the plaintiff has not satisfied the requirement of s 177(1) of the Code.

Even assuming that the endorsement was the act of the Registrar of Land Titles, the question remained whether he had the power to act as such. The following provisions of the Code are relevant in considering the issue.

Section 25 reads:

> Subject to the provisions of the Land (Control of Sub-division) Ordinance, and such rules as may be prescribed, any proprietor may, with the approval of the Superintendent, sub-divide his holding and transfer or sub-lease any sub-division thereof:
>
> Provided that no sub-division shall be approved by the Superintendent without the sanction of the Permanent Secretary, Ministry of Lands and Mineral Resources.

Section 45(3) reads:

> A surrender in accordance with the provisions of subsection (1) may, with the approval of the Superintendent, be made by the proprietor during the currency of any term for which the land has been alienated and a new document of title may be issued to him for the balance of such term, or for such other term as may be in accordance with rules made hereunder, subject to such conditions as may be imposed by the Superintendent and subject to such registered charges and other interests as may affect the estate or interest surrendered on the date of the surrender.

Section 177(1) reads:

> Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

Section 189 reads:

> Every power of attorney intended to be used for the purpose of effecting a dealing under this Code shall be presented to the Registrar and shall be registered and retained by him, unless a duplicate or attested copy thereof is furnished to the Registrar in lieu.

It is to be noted that there is no provision in the Code providing for the continuation of a title deed on land in the event of its sub-division, surrender and subsequent issuance of sub-divided title deeds similar to that of s 202 of the National Land Code 1965. (See also *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd.*[4])

There is a reference to the Land (Control of Sub-division) Ordinance (Cap 81) ('the said Ordinance') by s 25 of the Code and even assuming that the said Ordinance is applicable, there is also no provision in the said Ordinance for the continuation of a title deed on land in the event of sub-division resulting in issuance of new sub-divided title deeds. (See *Lee Chi Min & Anor v Superintendent of Land & Survey Department, Kuching.*[5]) Thus, the sub-divided issue documents of title in the instant case are not and should not be taken as a continuation of the parent title. (See also *Commissioner of Land Titles, Penang v Lim Theng Hoe.*[6]) I am fortified of this view, first, by the wording of s 45(3) which provides for the issuance of 'a new document of title' after a surrender and, secondly, after perusing the copies of the sub-divided issue documents of title annexed to Lai Chee Hua's affidavit. Nothing is shown in any of those copies indicating that it is a continuation of the parent title. In fact, no reference at all is made to the parent title save by implication from the endorsements of registered charge, the said power of attorney and a caveat. On the basis that:

(i) the relevant sub-divided issue documents of title are taken as new documents of title and not a continuation of the parent title;
(ii) the limited savings by s 45(3); and
(iii) the effect of the surrender of the parent title not in dispute,

the endorsement of the said power of attorney on the sub-divided issue documents of title must therefore be considered with suspicion.

Learned counsel for the plaintiff had rightly conceded that a power of attorney would not give an interest in land. Learned author Douglas J Whalan in his book *The Torrens System in Australia* at p 143 wrote '... that a power of attorney is not truly a registered instrument conferring an estate or interest'.

But to say further that the word 'interests' in s 45(3) is wide enough to cover a power of attorney is not consonant with the usual status accorded to a power of attorney.

It follows therefore that the purported endorsement of the said power of attorney on the sub-divided issue documents of title is of no consequence as it is not provided for by the Code or under any written law currently in force in Sarawak. Accordingly, the plaintiff, in my view, has not met the requirement of s 177(1) of the Code. And on this ground as well, I agree with the contention of the defendant that the plaintiff has no locus standi to commence this proceeding.

A I have also taken the liberty to peruse the said power of attorney annexed to the supporting affidavit of the originating summons and regrettably, I find no provision for the plaintiff to act as he did over the sub-divided issue documents of title. Clause 1 of the said power of attorney stipulates:

> To appoint and instruct solicitors, architects and engineers for the purpose of
> B negotiating or settling with the authorities concerned all matters relating to all my right title share and interest in that parcel of land together with the buildings thereon and appurtenance thereof, if any, situate at Sungai Sebab, Bintulu, Sarawak, containing an area of 13.476 hectares, more or less, and comprised in Bintulu Lease of Crown Land No 6237 (hereinafter referred to as 'the said landed property').

C It is to be noted that the phrase 'the said landed property' does not include the sub-divided lots and given my findings that there is no continuation of title and the inconsequential effect of the purported endorsement, cl 1 does not provide the plaintiff any power to act as it did in this proceeding.

I rule therefore that the plaintiff has no locus standi in commencing this
D action in view of the provisions of the Code and it must therefore be dismissed with costs.

Application dismissed.

Reported by Anne Khoo

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